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EXAMINER	
LE, MIRANDA	
ART UNIT	**PAPER NUMBER**
2167	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/736,621	WALKER ET AL.	
	Examiner	Art Unit	
	Miranda Le	2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/17/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 12/17/2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

2. Claim 14 is objected to because of the following informalities: Claim 14, page 28, line 6, "a the diagnosis" should be changed to "the diagnosis". Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-43 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-43 of U.S. Patent No. 6,684,276 in view of Lapointe et al. (US Patent No. 6,678,669). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

5. Claims 1, 14, 27, 40 contain all limitations of claims 1, 14, 27, 40 of U.S. Patent No. 6,684,276 except the limitations: "said diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting". However, Lapointe teaches diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting *(col. 15, lines 14-44).*

It would have been obvious to one of ordinary skill of the art having the teaching of Segal and Lapointe at the time the invention was made to modify the system of Segal to include diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting as taught by Lapointe.

One of ordinary skill in the art would be motivated to make this combination in order to select an appropriate course of treatment in view of Lapointe, as doing so would give the added benefit of predicting the result of selected course of treatment and to predict status following therapy as taught by Lapointe *(col. 15, lines 26-37).*

The dependent claims 2-13, 15-26, 28-39, 41-43 of the instant application are rejected for fully incorporating the errors of their respective base claims by dependency.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-8, 11, 13, 14-21, 24, 26, 27-34, 37, 39, 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segal et al. (US Patent No. 6,754,655), in view of Lapointe et al. (US Patent No. 6,678,669).

As per claim 1, Segal teaches a patient encounter electronic medical record apparatus comprising:

a processor *(i.e. CPU 18, Fig. 1);*

an input interface configured to receive data input by a physician *(i.e. allow a clinician to select one of said plural medical conditions, col. 3, lines 9-26)* and an output interface *(i.e. displaying, col. 3, lines 9-26)* coupled to said processor *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12);*

a memory *(i.e. memory 22, Fig. 1); and*

a plurality of diagnosis specific pre-populated templates *(i.e. a plurality of candidate medical conditions, col. 2, lines 38-49)* stored in said memory and accessible by said processor, default entries *(i.e. to select one of said plural medical conditions, col. 3, lines 9-26)* in said diagnosis specific pre-populated templates being changeable to alternate values by said physician *(i.e. the screen also provides a set of controls that the user can employ to change the constraints applied to the Usefulness determination, col. 10, lines 8-17)*, said default entries being associated with a pre-determined diagnosis *(i.e. a list of disease, col. 11, lines 29-50) (col. 10, lines 1-44);*

wherein said user interface is configured to receive an input by said physician after said physician has made a diagnosis *(i.e. the clinician is provided information for justifying a diagnosis, col. 3, lines 9-26)* to select a subset of said diagnosis specific pre-populated templates that correspond with the diagnosis made by the physician *(i.e. the Justification screen provides a list of findings ... in the particular disease being displayed, col. 10, lines 45-58)*, and said processor is configured to produce an electronic medical record from said subset of diagnosis specific pre-populated templates *(i.e. the operation of generating the data records can be distributed across a plurality of users on the network, col. 5, lines 20-42)(col. 3, lines 27-34).*

Segal does not expressly teach diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting.

However, Lapointe teaches diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office

setting, a surgery setting, an analgesics setting, and a therapy setting *(col. 15, lines 14-44).*

It would have been obvious to one of ordinary skill of the art having the teaching of Segal and Lapointe at the time the invention was made to modify the system of Segal to include diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting as taught by Lapointe.

One of ordinary skill in the art would be motivated to make this combination in order to select an appropriate course of treatment in view of Lapointe, as doing so would give the added benefit of predicting the result of selected course of treatment and to predict status following therapy as taught by Lapointe *(col. 15, lines 26-37).*

As per claim 14, Segal teaches a patient encounter electronic medical record apparatus comprising:

a processor *(i.e. CPU 18, Fig. 1);*

inputting means for receiving data input by a physician *(i.e. allow a clinician to select one of said plural medical conditions, col. 3, lines 9-26)* and outputting means for outputting data, said inputting means and said outputting means *(i.e. displaying, col. 3, lines 9-26)* coupled to said processor *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12);*

memory means for storing data *(i.e. memory 22, Fig. 1); and*

a plurality of diagnosis specific pre-populated template means *(i.e. a plurality of candidate medical conditions, col. 2, lines 38-49)* for structuring data stored in said

memory means and accessible by said processor means, default entries *(i.e. to select one of said plural medical conditions, col. 3, lines 9-26)* in said diagnosis specific pre-populated template means being changeable to alternate values by said physician *(i.e. the screen also provides a set of controls that the user can employ to change the constraints applied to the Usefulness determination, col. 10, lines 8-17)*, said default entries being associated with a predetermined diagnosis *(i.e. a list of disease, col. 11, lines 29-50) (col. 10, lines 1-44);*

wherein said inputting means is configured to receive an input by said physician after said physician has made a diagnosis *(i.e. the clinician is provided information for justifying a diagnosis, col. 3, lines 9-26)* to select a subset of said diagnosis specific pre-populated template means that correspond with the diagnosis made by the physician *(i.e. the Justification screen provides a list of findings ... in the particular disease being displayed, col. 10, lines 45-58)*, and said processor produces an electronic medical record from said plurality of diagnosis specific pre-populated template means *(i.e. the operation of generating the data records can be distributed across a plurality of users on the network, col. 5, lines 20-42) (col. 3, lines 27-34).*

Segal does not expressly teach diagnosis specific pre-populated template means being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting.

However, Lapointe teaches diagnosis specific pre-populated template means being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting *(col. 15, lines 14-44).*

It would have been obvious to one of ordinary skill of the art having the teaching of Segal and Lapointe at the time the invention was made to modify the system of Segal to include diagnosis specific pre-populated template means being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting as taught by Lapointe.

One of ordinary skill in the art would be motivated to make this combination in order to select an appropriate course of treatment in view of Lapointe, as doing so would give the added benefit of predicting the result of selected course of treatment and to predict status following therapy as taught by Lapointe *(col. 15, lines 26-37).*

As per claim 27, Segal teaches a patient encounter electronic medical record computer product comprising:

a processor *(i.e. CPU 18, Fig. 1);*.

an input interface configured to receive data input by a physician *(i.e. allow a clinician to select one of said plural medical conditions, col. 3, lines 9-26)* and an output

a memory configured to hold computer-readable instructions *(i.e. memory 20, 22, Fig. 1); and*

a plurality of diagnosis specific pre-populated templates *(i.e. a plurality of candidate medical conditions, col. 2, lines 38-49)* stored in said memory and accessible by said processor, default entries *(i.e. to select one of said plural medical conditions, col. 3, lines 9-26)* in said diagnosis specific pre-populated templates being changeable to alternate values by said physician *(i.e. the screen also provides a set of controls that the user can employ to change the constraints applied to the Usefulness determination, col.*

10, lines 8-17), said default entries being associated with a predetermined diagnosis *(i.e. a list of disease, col. 11, lines 29-50) (col. 10, lines 1-44);*

wherein said user interface is configured to receive an input by said physician after said physician has made a diagnosis *(i.e. the clinician is provided information for justifying a diagnosis, col. 3, lines 9-26)* to select a subset of said diagnosis specific pre-populated templates that correspond with a the diagnosis made by the physician *(i.e. the Justification screen provides a list of findings ... in the particular disease being displayed, col. 10, lines 45-58)*, and wherein said processor is configured to produce an electronic medical record from said subset of diagnosis specific pre-populated templates *(i.e. the operation of generating the data records can be distributed across a plurality of users on the network, col. 5, lines 20-42)(col. 3, lines 27-34).*

Segal does not expressly teach diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting.

However, Lapointe teaches diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting *(col. 15, lines 14-44).*

It would have been obvious to one of ordinary skill of the art having the teaching of Segal and Lapointe at the time the invention was made to modify the system of Segal to include diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting as taught by Lapointe.

One of ordinary skill in the art would be motivated to make this combination in order to select an appropriate course of treatment in view of Lapointe, as doing so would give the added benefit of predicting the result of selected course of treatment and to predict status following therapy as taught by Lapointe *(col. 15, lines 26-37).*

As per claim 40, Segal teaches a method for recording a patient encounter electronic medical record, comprising the steps of:

holding a plurality of diagnosis specific pre-populated templates with default entries *(i.e. to select one of said plural medical conditions, col. 3, lines 9-26)* in a memory and accessible by a processor *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12);*

making a diagnosis by a physician *(i.e. the clinician is provided information for justifying a diagnosis, col. 3, lines 9-26);*

retrieving a subset of the plurality of diagnosis specific pre-populated templates that correspond with the diagnosis made by the physician *(i.e. the Justification screen provides a list of findings ... in the particular disease being displayed, col. 10, lines 45-58)*, said retrieving step being performed after said step of making a diagnosis *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12);*

verifying *(i.e. the screen also provides a set of controls that the user can employ to change the constraints applied to the Usefulness determination, col. 10, lines 8-17)* said default entries and changing as necessary said default entries in said subset of the diagnosis specific pre-populated templates by a physician input *(col. 10, lines 1-44); and*

producing an electronic medical record from said subset of diagnosis specific prepopulated templates and entries associated therewith, after said verifying step *(i.e. the operation of generating the data records can be distributed across a plurality of users on the network, col. 5, lines 20-42)(col. 3, lines 27-34).*

Segal does not expressly teach diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting.

However, Lapointe teaches diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting *(col. 15, lines 14-44).*

It would have been obvious to one of ordinary skill of the art having the teaching of Segal and Lapointe at the time the invention was made to modify the system of Segal to include diagnosis specific pre-populated templates being configured to enable said physician to perform said diagnosis in at least one of an office setting, a surgery setting, an analgesics setting, and a therapy setting as taught by Lapointe.

One of ordinary skill in the art would be motivated to make this combination in order to select an appropriate course of treatment in view of Lapointe, as doing so would give the added benefit of predicting the result of selected course of treatment and to predict status following therapy as taught by Lapointe *(col. 15, lines 26-37).*

As to claims 2, 15, 28, Segal teaches said input interface includes a graphical user interface, and said output interface includes a graphical user interface *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12).*

As to claims 3, 16, 29, 42, Segal teaches said diagnosis specific pre-populated templates include at least one of specialty-specific templates and primary care templates *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12; col. 10, lines 1-58).*

As to claims 4, 17, 30, Segal teaches said processor is a component of a distributed computing system *(col. 5, lines 20-42).*

As to claims 5, 18, 31, 41, Segal teaches said plurality of diagnosis specific pre-populated templates are configured for at least one of a drilldown logic and a rollup logic *(Figs. 3-6).*

As to claims 6, 19, 32, Segal teaches said plurality of diagnosis specific pre-populated templates include graphics modulated schematics *(Figs. 3-6).*

As to claims 7, 20, 33, 43, Segal teaches said diagnosis specific pre-populated templates are derived from at least one of a selective specialty specific database and an anatomic specific database *(col. 2, lines 13-64).*

As to claims 8, 21, 34, Segal teaches said diagnosis specific pre-populated templates are end-user modifiable *(col. 10, lines 1-58).*

As to claims 11, 24, 37, Segal teaches said plurality of diagnosis specific pre-populated templates are configured for at least one of E/M documentation, x-rays, diagnostic studies, prescriptions, and reports *(col. 3, lines 9-26; col. 11, line 29 to col. 12, line 12; col. 10, lines 1-58).*

As to claims 13, 26, 39, Segal teaches said distributed computing environment comprises at least one of a Wide Area Network, a Local Area Network, and a Wireless Network *(col. 5, lines 20-42).*

8. Claims 9, 12, 22, 25, 35, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segal et al. (US Patent No. 6,754,655), in view of Lapointe et al. (US Patent No. 6,678,669), and further in view of Fey et al. (US Pub. No. 20030187688).

As to claims 9, 22, 35, Segal and Lapointe do not expressly teach input interface is configured to convert voice input into text via a speech recognition mechanism.

However, Fey teaches input interface is configured to convert voice input into text via a speech recognition mechanism *(i.e. User input may be received from the keyboard, mouse, pen, voice, touch screen, or any other means by which a human can input data into a computer, including through other programs such as application programs, [0160]).*

It would have been obvious to one of ordinary skill of the art having the teaching

of Segal, Lapointe and Fey at the time the invention was made to modify the system of Segal and Lapointe to include input interface is configured to convert voice input into text via a speech recognition mechanism as taught by Fey.

One of ordinary skill in the art would be motivated to make this combination in order to collect screening, *diagnostic,* and demographic data from clients in view of Fey *([0002])*, as doing so would give the added benefit of this information can be accessed and utilized by doctors and researchers to discover trends, conduct scientific research, and study pre-symptomatic health data as taught by Fey *([0045]).*

As to claims 12, 25, 38, Segal and Lapointe do not expressly teach distributed computing environment comprises at least one of a payment system and an audit system.

However, Fey teaches distributed computing environment comprises at least one of a payment system and an audit system *(i.e. Responsibility for payment is also noted in the database, [0119]).*

It would have been obvious to one of ordinary skill of the art having the teaching of Segal, Lapointe and Fey at the time the invention was made to modify the system of Segal and Lapointe to include distributed computing environment comprises at least one of a payment system and an audit system as taught by Fey.

One of ordinary skill in the art would be motivated to make this combination in order to fully cover the costs of the program for their employees under wellness plans in view of Fey *([0119])*, as doing so would give the added benefit of health screenings can also be booked as events when a public organization, such as a local school or health department, wants to hold open house health fairs as taught by Fey *([0119]).*

9. Claims 10, 23, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segal et al. (US Patent No. 6,754,655), in view of Lapointe et al. (US Patent No. 6,678,669), and further in view of Pressly (US Pub. No. 20020065854).

As to claims 10, 23, 36, Segal and Lapointe do not expressly teach input interface is configured to receive data of at least one of a digital image input, a digital x-ray input, and a wireless device input.

However, Pressly teaches input interface is configured to receive data of at least one of a digital image input, a digital x-ray input, and a wireless device input *([0008])*.

It would have been obvious to one of ordinary skill of the art having the teaching of Segal, Lapointe and Pressly at the time the invention was made to modify the system of Segal and Lapointe to include input interface is configured to receive data of at least one of a digital image input, a digital x-ray input, and a wireless device input as taught by Pressly.

One of ordinary skill in the art would be motivated to make this combination in order to associate and allow efficient access to patient demographic information, the details of ordered procedures, imaging data, and diagnostic information in view of Pressly, as doing so would give the added benefit of providing an improved automated system for supplying doctors with comprehensive information needed to complete a medical diagnosis for a particular patient as taught by Pressly *([0008])*.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Miranda Le whose telephone number is (571) 272-4112. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Cottingham, can be reached on (571) 272-7079. The fax number to this Art Unit is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Miranda Le
August 25, 2006

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